



# Retirement Guidance

## IRS EASES CORRECTIONS FOR PARTICIPANT LOAN AND DOCUMENT FAILURES

### VCP FILING FEES

| Net plan assets                   | VCP submission fee |
|-----------------------------------|--------------------|
| \$0 to \$500,000                  | \$1,500            |
| Over \$500,000<br>to \$10,000,000 | \$3,000            |
| Over \$10,000,000                 | \$3,500            |

Retirement plans are incredibly complex, and even the best-run plans make mistakes. In newly published guidance by the IRS, plan sponsors may now self-correct many problems with their retirement plan operations or documents, saving time and money.

### What's changing

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New Revenue Procedure 2019-19 modifies and supersedes prior IRS guidance regarding the Employee Plans Compliance Resolution System (EPCRS) and takes effect April 19, 2019. It provides new opportunities for plan sponsors to correct loan defaults and other minor operational failures without going through the costly and lengthy voluntary correction program (VCP) procedure.



## Document failures

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Before, retroactively amending a plan to repair operational errors when the plan was administered differently from the plan document terms or to correct the failure to timely adopt an amendment was only available in very limited situations. These included allowing employees to participate in the plan too soon, allowing participants to take loans or hardship distributions without plan provisions, and failing to limit the compensation used for contribution allocations to the legal limit.

Retroactive amendments may now be made to repair operational errors if:

1. The amendment conforms the plan document to actual operations;
2. A benefit, right or feature of the plan would increase because of the amendment;
3. The increase applies to all eligible employees; and
4. The increase is consistent with the procedure's correction principles.

Retroactive amendments may also be used to self-correct plan documentation failures such as the inclusion of a provision that is prohibited or the omission of a provision required for plan qualification if:

1. The plan has received a favorable determination or opinion letter;
2. The error is not the failure to timely adopt a qualified plan or a written 403(b) plan document; and
3. The correction occurs by the end of the second plan year following the year in which the plan document failure occurred (the self-correction period).

## Participant loan failures

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The new guidance also expands the self-correction of participant loan failures. When a participant fails to repay a participant loan on time, the total principal and accrued interest of the loan become taxable income to the participant in the year of default. The law permits a limited "grace period" after the default. However, prior to the new procedure, once that grace period had ended without repayment, nothing could be done to prevent the full taxation outside of VCP. This was true even if the problem arose because the plan sponsor failed to start the intended automatic deduction for the loan repayment on its payroll system. Now self-correction is available to:

1. Correct loan defaults through single sum repayment, reamortization of the loan balance, or a combination of the two, without filing a VCP application;
2. Report a deemed distribution in the year of correction rather than in the year of the failure without submitting a VCP application;
3. Increase the number of loans available to a single participant by retroactive amendment; and
4. Obtain spousal consent retroactively if plan requires it.



If a loan default is self-corrected properly, the participant avoids having the loan treated as taxable income. If the loan default happened so long ago that the maximum five-year repayment period has already expired, the self-correction program can only be used to allow the income to be taxable in the year of correction, rather than the year of default.

## Next steps

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The new guidance is now available and especially welcomed after the IRS removed its low cost VCP filings in January 2018. Loan failures are one of the most common plan errors, and the Revenue Procedure should help reduce the burden on plan sponsors and participants because of inadvertent mistakes. In addition, when employers change service providers and move to a new document, it is very common that an intended plan provision fails to make it into the new plan. The ability to retroactively amend a plan will be helpful in those situations. Remember, however, that plan document self-correction must occur within two years following the year in which the mistake occurred.

## PROTECTION FOR CLIENTS' BUSINESSES. SECURITY FOR THEIR EMPLOYEES.

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